

AMBRAS 6.0-001

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

B.I.G. JEWELRY CO., L.L.C.) Case No. 1:07-CV-08245 (NRB)
Plaintiff,)
v.) Judge Naomi Reice Buchwald
TARGET CORPORATION, AMBRAS)
FINE JEWELRY, INC., SAMUEL)
JEWELERS, INC., GITANJALI GEMS)
LTD, and JOHN DOES 1-5)
Defendants.)
) **ECF CASE**
)
) **DEFENDANTS AMBRAS FINE**
)**JEWELRY, INC.'s AND TARGET**
)**CORPORATION'S ANSWER AND**
)**AFFIRMATIVE DEFENSES TO**
)**PLAINTIFF'S FIRST AMENDED**
)**COMPLAINT**
)

ANSWER & AFFIRMATIVE DEFENSES

ANSWER

Defendants Ambras Fine Jewelry, Inc. (“Ambras”) and Target Corporation (“Target”) (collectively herein “**Defendants**”), through their attorneys, Answers Plaintiff B.I.G. Jewelers Co.’s First Amended Complaint as follows:

1. Defendants admit to the allegations in paragraphs 1 through 8 of the Complaint.
2. As to the allegations in paragraphs 9 through 11 of the Complaint, Defendants do not have sufficient information to respond, and therefore, deny them, and leave Plaintiff to its proofs.
3. Defendants admit the allegations in paragraph 12 of the Complaint.
4. Defendants deny the allegations in paragraphs 13 and 14 of the Complaint.
5. As to the allegations in paragraphs 15 and 16 of the Complaint, Defendants do not have sufficient information to respond as to the truth of these allegations, and therefore, deny them, and leave Plaintiff to its proofs.
6. In response to the allegations in paragraph 17, the Defendants repeat and reaffirm their responses directed to paragraphs 1 through 16 above as if fully set forth herein.
7. Defendants deny the allegations in paragraphs 18 and 19 of the Complaint.
8. As to the allegations in paragraph 20 through 23, Defendants are checking into the truth of these allegations, and at this time Defendants do not have sufficient information to admit or deny as to the truth of these allegations.

9. Defendants deny the allegations in paragraphs 24 through 30 of the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint, even when taken as true, fails to state a claim upon which relief can be granted, and should be dismissed under Rule 12(b)(6) of the Fed. R. Civ. Proc.

2. Plaintiff's purported "copyrights" including those for the "Ring, Pendant, Earring" and "Frame with Pear Stone" are invalid, and unenforceable, and therefore cannot, by definition, have been infringed.

3. Plaintiff is not the owner (claimants) of the copyrights in question and the alleged assignment is invalid.

4. The accused product(s) are not substantially similar and do not infringe the copyrights in suit.

5. Under the Copyright Act, §412(2), Plaintiff is not entitled to attorneys fees or statutory damages for any allegedly infringing activities which may have occurred since the alleged copyright(s) were not validly and duly filed within three (3) months after the first publication of the respective work(s).

6. Plaintiff's Complaint is barred under the doctrines of estoppel and unclean hands.

7. Defendants' actions were innocent and lacked any evidence of bad faith or willful infringement.

8. Plaintiff's claims are barred by waiver.

WHEREFORE, Defendants Ambras Fine Jewelry, Inc. and Target Corporation request:

- a) dismissal of Plaintiff's Complaint with prejudice;
- b) damages and lost profits as a result of Plaintiff's unlawful actions;
- c) costs and attorneys fees; and
- d) such other legal and equitable relief as the Court deems just and equitable.

JURY DEMAND

Defendants Ambras Fine Jewelry, Inc. and Target Corporation demand a jury trial on all issues raised in its above stated Answer and Affirmative Defenses to the Complaint.

Respectfully submitted,



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Dated: November 16, 2007

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